

## REMARKS

In the Office Action mailed from the United States Patent and Trademark Office on January 30, 2009, claims 1, 5-12 and 24-26 were rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement; claims 9-12 were rejected under 35 U.S.C. 102(b) as being anticipated by Solomon (1998); claims 1, 5-12 and 26 were rejected under 35 U.S.C. 103(a) as being unpatentable over Hirazumi (1998) in view of Solomon (1998) in view of Ashurst (1999) in view of Elliot (U.S. 1,885,401) and further in view of Beaven (GB 2215173A) and Astrauskas et al. (U.S. 3,953,582); claims 1, 5-12 and 24-26 were rejected under 35 U.S.C. 103(a) as being unpatentable over Hirazumi (1998) in view of Solomon (1998) in view of Ashurst (1999) in view of Elliot (U.S. 1,885,401) in view of Beaven (GB 2215173A) in view of Astrauskas et al. (U.S. 3,953,582) in view of Weil (2000);

### Rejections Under 35 U.S.C. 112

Claims 1, 5-12 and 24-26 were rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. In particular, the pending Action indicated that claim 1's recital of a limitation for "allowing fruit to ripen for 1-14 days" and "holding the fruit in said containers for 1 to 30 days" and "screen filter size between 200 and 500 microns" do not find support in the original specification as filed.

M.P.E.P. § 2163 summarizes the applicable standard from court decisions concerning the written description requirement. It indicates that there is no *in haec verba* requirement (i.e. there is no requirement that the claim limitation be word-for-word what is contained in the specification), and that it is sufficient for claim limitations to be supported through "express, implicit, or inherent disclosure." Thus, as set forth in M.P.E.P. § 2163, the requirement is satisfied if the patent specification describes the claimed invention "in sufficient detail that one skilled in the art can reasonably conclude that the inventor had possession of the claimed invention." Applicant respectfully submits that the rejected claim language satisfies this requirement.

The rejected claim language from claim 1 of "allowing fruit to ripen for 1-14 days" is supported by the specification as originally filed. The specification clearly states that the fruit is allowed to ripen or age from 0 to 14 days by being placed on equipment so that the ripening fruit

is prevented from contacting the ground (specification, page 12, lines 11-12). One skilled in the art would readily recognize that applicant had possession of the invention as claimed from this disclosure. In particular, one skilled in the art would recognize that applicant recognized the need to allow fruit to ripen for a period of time in a condition that prevented the fruit from contacting the ground.

The rejected claim language from claim 1 of "holding the fruit in said container for 1-30 days" has been amended to recite "allowing fruit to ripen for 7-14 days," which finds direct support in the specification. Accordingly, one of skill in the art would recognize that the applicant had possession of the invention as claimed from this disclosure.

The rejected claim language from claim 1 of "screen filter size between 200 and 500 microns" has been amended to recite "a screen filter size less than 500 microns," which finds support in the specification as filed. In particular, the specification indicates that in one embodiment it is more preferable that the screen filter size be less than 500 microns (specification, page 12, lines 5-6). One of skill in the art would recognize that applicant had possession of the invention as claimed from this disclosure.

### **Rejections Under 35 U.S.C. 102**

Claims 9-12 were rejected under 35 U.S.C. 102(b) as being anticipated by Solomon (1998). M.P.E.P. § 2131 sets forth the standard for a rejection of a claim as anticipated under 35 U.S.C. § 102. "To anticipate a claim, the reference must teach every element of the claim." M.P.E.P. § 2131 states further,

"A claim is anticipated only if each and every element as set forth in the claim is found, either expressly or inherently described, in a single prior art reference." *Verdegaal Bros. v. Union Oil Co. of California*, 814 F.2d 628, 631, 2 USPQ2d 1051, 1053 (Fed. Cir. 1987). . . . "The identical invention must be shown in as complete detail as is contained in the . . . claim." *Richardson v. Suzuki Motor Co.*, 868 F.2d 1226, 1236, 9 USPQ2d 1913, 1920 (Fed. Cir. 1989).

Applicant respectfully submits that Solomon does not teach or suggest all the limitations claimed in the claim set provided herein. As indicated above in the amended claim section, claim 1 recites a "method for processing and administering an improved *Morinda citrifolia* product with increased capacity to scavenge lipid hydroperoxides and superoxide anion free

radicals within the body, said method comprising: harvesting the fruit from a *Morinda citrifolia* plant; allowing fruit to ripen for 7 to 14 days; preparing said harvested fruit for extraction of the juice there from, wherein said preparing comprises: placing the ripened fruit in plastic lined containers, and holding the fruit in said containers for 1 to 30 days extracting the juice from said prepared fruit to obtain said *Morinda citrifolia* fruit juice, wherein said extraction comprises: [...] filtering by centrifuge decanter with a screen filter size less than 500 microns, wherein said operating filter pressure may range from about 0.1 psig to 1000 psig combining said processed *Morinda citrifolia* product with other ingredients [...]"

Applicant submits Solomon does not teach every aspect of the claimed invention, as amended. The method of making the product, and the various constitutive elements added to the product before delivery have a significant effect on lipidperoxidation inhibition. The specification of the present invention and the art cited against the present application outline the importance of the harvesting and processing steps in order to produce an improved *Morinda citrifolia* product, which has increased and unexpected capacity to inhibit lipidperoxidation. As Solomon fails to disclose or suggest all of the claim limitations of independent claims of the present invention the present invention is novel over Solomon.

### **Rejections Under 35 U.S.C. 103**

Claims 1, 5-12 and 26 were rejected under 35 U.S.C. 103(a) as being unpatentable over Hirazumi (1998) in view of Solomon (1998) in view of Ashurst (1999) in view of Elliot (U.S. 1,885,401) and further in view of Beaven (GB 2215173A) and Astrauskas et al. (U.S. 3,953,582) and claims 1, 5-12 and 24-26 were rejected under 35 U.S.C. 103(a) as being unpatentable over Hirazumi (1998) in view of Solomon (1998) in view of Ashurst (1999) in view of Elliot (U.S. 1,885,401) in view of Beaven (GB 2215173A) in view of Astrauskas et al. (U.S. 3,953,582) in view of Weil (2000).

M.P.E.P. § 2141 sets forth the *Graham* factual inquiries that should be considered when making an obviousness rejection under Section 103: 1) ascertaining the scope and content of the prior art; 2) ascertaining the differences between the claimed invention and the prior art; and 3) resolving the level of ordinary skill in the pertinent art. (Citing *Graham v. John Deere*, 383 U.S.

1, 148 USPQ 459 (1966).) In addition, M.P.E.P. §§ 2141 and 2142 set forth that "the analysis supporting a rejection under 35 U.S.C. 103 should be made explicit." (Citing *KSR International Co. v. Teleflex Inc. (KSR)*, 550 U.S., 82 USPQ2d 1385 (2007).)

The M.P.E.P. provides several examples of rationales that can support a rejection under 35 U.S.C. § 103, namely:

- (A) Combining prior art elements according to known methods to yield predictable results;
- (B) Simple substitution of one known element for another to obtain predictable results;
- (C) Use of known technique to improve similar devices (methods, or products) in the same way;
- (D) Applying a known technique to a known device (method, or product) ready for improvement to yield predictable results;
- (E) "Obvious to try" - choosing from a finite number of identified, predictable solutions, with a reasonable expectation of success;
- (F) Known work in one field of endeavor may prompt variations of it for use in either the same field or a different one based on design incentives or other market forces if the variations are predictable to one of ordinary skill in the art;
- (G) Some teaching, suggestion, or motivation in the prior art that would have led one of ordinary skill to modify the prior art reference or to combine prior art reference teachings to arrive at the claimed invention.

(M.P.E.P. §§ 2141 & 2143, emphasis added.) As may be seen from the emphasized portions of the above potential rationales, each rationale is dependent on showing known elements from the prior art corresponding to the limitations of the claimed invention. Each rationale therefore depends on: 1) satisfying the *Graham* inquiry, showing that the scope and content of the prior art included each limitation contained in the claimed invention, and 2) satisfactorily showing that one of ordinary skill in the art would take the art teachings to overcome the identified differences under *Graham* between the claimed invention and the individual teachings of the prior art.

Applicant respectfully submits that the references in the Office Action, either alone or in combination, do not teach or suggest all the limitations claimed in the claim set provided herein. As indicated above in the amended claim section, claim 1 recites a "method for processing and administering an improved *Morinda citrifolia* product with increased capacity to scavenge lipid hydroperoxides and superoxide anion free radicals within the body, said method comprising:

harvesting the fruit from a *Morinda citrifolia* plant; allowing fruit to ripen for 7 to 14 days; preparing said harvested fruit for extraction of the juice there from, wherein said preparing comprises: placing the ripened fruit in plastic lined containers, and holding the fruit in said containers for 1 to 30 days extracting the juice from said prepared fruit to obtain said *Morinda citrifolia* fruit juice, wherein said extraction comprises: [...] filtering by centrifuge decanter with a screen filter size less than 500 microns, wherein said operating filter pressure may range from about 0.1 psig to 1000 psig combining said processed *Morinda citrifolia* product with other ingredients [...]"

Applicant submits that the cited references do not teach every aspect of the claimed invention, as amended. The method of making the product, and the various constitutive elements added to the product before delivery have a significant effect on lipidperoxidation inhibition. The specification of the present invention and the art cited against the present application outline the importance of the harvesting and processing steps in order to produce an improved *Morinda citrifolia* product, which has increased and unexpected capacity to inhibit lipidperoxidation.

Hirazumi, Solomon, Ashurst, Elliot, Beven, Astrauskas and Weil fail to teach or fairly suggest the particular processing steps that produce a *Morinda citrifolia* product developed particularly to scavenge lipid hydroperoxides.

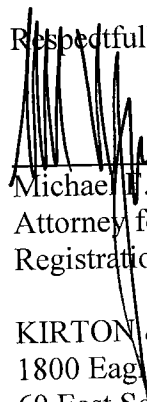
As the cited references fail to disclose or suggest all of the claim limitations of independent claims of the present invention, and further fail to suggest modifying the reference as suggested by the Examiner, the present invention is not obvious in view of such references.

### CONCLUSION

If any impediments to the allowance of this application for patent remain after the above amendments and remarks are entered, the Examiner is invited to initiate a telephone conference with the undersigned attorney of record.

DATED this 28 day of May, 2009.

Respectfully submitted,



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